Supreme Court, U.S.
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No.

# In the Supreme Court of the United States

**ROSALINDA ALT,**

*Petitioner,*

v.

**COMMISSIONER OF INTERNAL REVENUE,**

*Respondent.*

**Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether petitioner's status, as a woman electing to remain married (and not separated), consistent with the First and Fifth Amendments, can be partially disqualified from receiving innocent spouse relief, where 26 U.S.C. § 6015(c)(3)(A)(i) provides more favorable relief for those who are divorced or separated?

## TABLE OF CONTENTS

PAGE

QUESTION PRESENTED ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii-iv

OPINION BELOW ..... 2

JURISDICTION ..... 2

CONSTITUTION, STATUTES AND RULES INVOLVED ..... 2-4

STATEMENT ..... 4-13

REASONS FOR GRANTING THE WRIT ..... 13-20

CONCLUSION ..... 20

APPENDICES

United States Court of Appeals, Sixth Circuit Decision (unpublished) ..... App. 1-25

United States Tax Court Decision ..... App. 26-42

## TABLE OF AUTHORITIES

PAGE(S)

***Federal Cases***

*Alt v. CIR*,
T.C. Memo 1994-313, 1994 WL 320823 ..... 7

*Bennis v. Michigan*, 516 U.S. 442,
116 S.Ct. 994 (1996) ..... 18-19

*Friedman v. Commissioner*,
216 F.3d 537 (6th Cir. 2000) ..... 18

*McCabe v. Sharrett*,
12 F.3d 1558 (11th Cir. 1994) ..... 16

*Mitchell v. Commissioner*,
292 F.3d 800 (D.C. Cir. 2002) ..... 18

*Overton v. Bazzetta*,
539 U.S. 126, 123 S.Ct. 2162 (2003) ..... 16-17, 19

*Resser v. Commissioner*,
74 F.3d 1528 (7th Cir. 1996) ..... 18

*Roberts v. United States Jaycees*, 468 U.S. 609,
104 S.Ct. 3244 (1984) ..... 15-16, 19

*Stein v. Bowman*, 38 U.S. (13 Pet.) 209, 223,
10 L.Ed. 129 (1839) ..... 14, 19

*United States v. Alt*,
996 F.2d 827 (6th Cir. 1993) ..... 7

*United States v. Alt, et al.*,
83 F.3d 779 (6th Cir. 1996),
*cert. denied*, 519 U.S. 872,
117 S.Ct. 188 (1996) ..... 8

*United States v. Mitchell*,
403 U.S. 190, 91 S.Ct. 1763 (1971) ..... 17-18, 19

*Zablocki v. Redhail*,
434 U.S. 374, 98 S.Ct. 673 (1978) ..... 16

***Constitution, Statutes and Rules***

First Amendment, Federal Constitution ..... 15-16, 20

Fifth Amendment, Federal Constitution ..... 16

26 U.S.C. § 6015 (1998) ..... *passim*

26 U.S.C. §§ 7482(a), 7483 ..... 2

28 U.S.C. § 1254(1) ..... 2

FRAP Rule 13(a) ..... 2

***Other Authority***

Home Economics High School Text Book,
1954, Publisher Unavailable ..... 4-5

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ROSALINDA ALT,

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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TO: The Chief Justice and Associate Justices of the United States Supreme Court. May it please the court:

Rosalinda Alt (hereafter Mrs. Alt or petitioner), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

## OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit was filed on June 3, 2004. App. 1-25. No petition for rehearing was filed.

## JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit was entered on June 3, 2004. App. 1-25. Mrs. Alt's appeal emanated from a United States Tax Court decision entered on December 17, 2002. App. 26-42. The Tax Court had jurisdiction pursuant to 26 U.S.C. § 6015(e) and appellate jurisdiction was conferred pursuant to 26 USC §§ 7482(a), 7483 and FRAP Rule 13(a).

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTION, STATUTES AND RULES

In relevant part, 26 U.S.C. § 6015 (1998) outlines when a taxpayer is eligible for innocent spouse relief. Per § 6015(b) the taxpayer is eligible if he or she meets five conditions:

> (A) a joint return has been made for a taxable year;
>
> (B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;
>
> (C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;

(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement, and

(E) the other individual elects . . . the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election

§ 6015(c)(3)(A)(i) provides:

(i) In general.—An individual shall only be eligible to elect the application of this subsection if—

(I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

§ 6015(f) provides relief at the discretion of the Secretary if a taxpayer establishes two elements:

(f) Equitable relief.—Under procedures prescribed by the Secretary,—

(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and

(2) relief is not available to such individual under subsection (b) or (c).

the Secretary may relieve such individual of such liability.[1]

## STATEMENT

### 1. Overview.

Rosalinda Alt has reached her 78th birthday. To understand Mrs. Alt, the Court must harken to the teachings of her time and place in life. Mothers taught daughters homemaking—not bookkeeping. Matters of finance were left to the husband/breadwinner, to do otherwise was an attempt to usurp his role in an accepted pattern of family life. During the years at issue Rosalinda conducted herself in conformity with those teachings and that which was found in every *Home Economics High School text book* (*circa* 1954):

**HOW TO BE A GOOD WIFE**

Home Economics High School Text Book, 1954

Have dinner ready. Plan ahead, even the night before, to have a delicious meal, on time. This is a way of letting him know that you have been thinking about him and are concerned about his needs. Most men are hungry when they come home and the prospect of a good meal are part of the warm welcome needed.

Prepare yourself. Take 15 minutes to rest so that you'll be refreshed when he arrives. Touch up your makeup, put a ribbon in your hair and be fresh-looking. He has just been with a lot of work-weary people. Be a little gay and a

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[1] 26 U.S.C. § 6015 was enacted in 1998 as part of the Internal Revenue Service Restructuring and Reformat Act of 1998 Pub. L. 105-206, sec. 3201(a), 112 Stat. 734; H. Conf. Rept. 105-599, at 249 (1998), 1998-3 C.B. 747, 1003.

little more interesting. His boring day may need a lift. Clear away the clutter. Make one last trip through the main part of the home just before your husband arrives, gather up schoolbooks, toys, paper, etc. Then run a dust cloth over the tables. Your husband will feel he has reached a haven of rest and order, and it will give you a lift, too. Prepare the children. Take a few minutes to wash the children's hands and faces (if they are small), comb their hair, and if necessary change their clothes. They are little treasures and he would like to see them playing the part. Minimize all noise. At the time of his arrival, eliminate all noise of the washer, dryer, dishwasher, or vacuum. Try to encourage the children to be quiet. Be happy to see him. Greet him with a warm smile and be glad he is home. Some don'ts: Don't greet him with problems or complaints. Don't complain if he is late for dinner. Count this as minor compared with what he might have gone through that day. Make him comfortable. Have him lean back in a comfortable chair or suggest he lie down in the bedroom. Have a cool or warm drink ready for him. Arrange his pillow and offer to take off his shoes. Speak in a low, soft, soothing and pleasant voice. Allow him to relax and unwind. Listen to him. You may have a dozen things to tell him, but the moment of his arrival is not the time. Let him talk first. Make the evening his. Never complain if he does not take you out to dinner or to other places of entertainment. Instead, try to understand his world of strain and pressure, his need to be home and relax. The Goal: Try to make your home a place of peace and order where your husband can renew himself in body and spirit.

———♦———

Sadly, the lower courts refused to recognize the reality of Mrs. Alt's upbringing. Hopefully, this Court, in its collective and infinite wisdom, will grasp the reality of her life-lessons and reverse the judgment below.

## 2. Background of Litigation involving Dr. and Mrs. Alt and Family.

### a) 1991 Criminal Tax Trial.

On April 3, 1990, Dr. Alt and Karen Lind Alt (one of petitioner and Dr. Alt's daughters; hereafter Karen) were charged by a federal grand jury in the Western District of Michigan with five-counts of conspiracy to commit and the commission of tax evasion for the years 1983 and 1984 in violation of 18 U.S.C. § 371 and 26 U.S.C. § 7201. Karen and Dr. Alt were jointly tried and on March 8, 1991, Dr. Alt was convicted of counts 1 and 3 (acquitted on counts 2 and 4); Karen was convicted on counts 1, 2 and 4 (acquitted on counts 3 and 5).

On June 7, 1991, Dr. Alt and Karen were sentenced to 10-years in custody, and both commenced serving their respective sentences during July 1991.

### b) Direct Appeal.

Karen and Dr. Alt sought conviction vacation via direct appeal (consolidated briefing). The consolidated briefing disclosed that Dr. Alt, prior to the early 1980s, had no significant encounters with the IRS: to explain: In approximately 1960, Dr. Alt retained the services of Ron Schulz, a local accountant (area of Grand Rapids, Michigan). From that time until the early 1980s, Ron Schulz's accounting firm looked after Dr. Alt's business and personal tax filings, as well as the formulation of a pension plan and investments. Ron Schulz was retiring in approximately 1981 and Karen, a law school graduate, opened her own financial planning service (KL Financial). Karen persuaded Dr. Alt to allow her to assume the responsibilities that heretofore had been delegated to Mr. Schulz. Karen (subsequently treated for mental illness) was ill-equipped

to do either tax or financial planning. No matter. The end-result is the yet-ongoing strife between Mrs. Alt and the IRS. After plenary briefing and oral argument, a divided Sixth Circuit panel reversed the convictions, *United States v. Alt*, 996 F.2d 827 (6th Cir. 1993).

Dr. Alt served over 25-months in federal custody, and on May 24, 1994 (post-reversal, while represented by court-appointed-counsel), pled guilty to a single misdemeanor and he was sentenced to time served (Karen pled guilty to a single felony and was sentenced to time served).

**c) Antecedent IRS Civil Claims.**

On September 15, 1992, while Dr. Alt was in custody, the government filed a civil action claiming, *inter alia*, that he and Mrs. Alt owed the IRS millions of dollars for the tax years 1981-1990. The deficiency notices (as of 1992) disclosed tax deficiencies approximating $5,000,000.

During February 1993 (while Dr. Alt remained federally immured), he and Mrs. Alt entered into a stipulated settlement with the IRS, which included an additional $838,957 deficiency for the 1989 tax year. In 1994, following Dr. Alt's release, a petition to set aside the settlement (jointly submitted by Dr. and Mrs. Alt) was rejected, *Alt v. CIR*, T.C. Memo 1994-313, 1994 WL 320823.

**d) Civil Forfeiture Proceedings.**

The Government (including the IRS), not content with civil lawsuits and seizures, in an awesome display of its vast power, commenced a civil forfeiture action against Mrs. and Dr. Alt under 92 CV 00657 in the U.S. District Court for the Western District of Michigan, Southern Division. On October 24, 1994, they, appearing *pro se*, stipulated to the government's case and raised [only] a

federal double jeopardy issue. Based on the civil forfeiture proceedings, the government sold assets, owned or partially owned by the Alts including the family abode. Dr. Alt's double jeopardy appellate challenge was rejected, *United States v. Alt, et al.*, 83 F.3d 779 (6th Cir. 1996), *cert. denied*, 519 U.S. 872, 117 S.Ct. 188 (1996).

Pertinent to Mrs. Alt's present petition, at p. 11 of the government's brief in *United States v. Alt*, No. 95-1124 (Dr. Alt's double jeopardy forfeiture appeal), it noted that as of approximately November 11, 1994, Mrs. Alt owed the IRS $5,053,042.08.[2] Although 10 years have elapsed from November 1994, Mrs. Alt is utterly powerless to ascertain her current deficiency—which was the focal point for her tax court [innocent spouse] filings, and which provides the *sine qua non* for this petition.[3]

**3. History of Tax Court Litigation.**

On March 2, 2001, Mrs. Alt filed her petition with the IRS seeking "innocent spouse" relief for the years 1982-1989, pursuant to 26 U.S.C. § 6015 (R. 1, Pet. Ex. A). She claimed, *inter alia*, that the IRS was destroying what was left of her life, while relating that which had occurred over the last decade involving herself, Dr. Alt and their family (R. 1-2).

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[2] The Court of Appeals determined that petitioner and Dr. Alt owed (as of August 7, 2001) $3,512,423. App. 7a. Again, petitioner is incapable of determining her current deficiencies.

[3] Additional litigation involving the Alts and the IRS includ[ed] Bankruptcy Court filings in 1997 and 1998 (some of the C.I.R. exhibits offered during the Tax Court proceedings relate to those bankruptcy filings, Tr. 206-09, 211-14; cf., *In Re Alt*, 1999 WL 670726; appeal dismissed by the district court on June 27, 2000).

**4. Tax Court Testimony.**

Mrs. Alt, appearing *pro se*, before the Tax Court on November 1, 2001 testified that upon Dr. Alt and Karen being remanded to custody in 1991, the IRS seized every single asset owned or partially owned by Dr. and Mrs. Alt (Tr. 26-27).[4] She and her children were literally left "in the street," but the pastor at Remembrance Church allowed Mrs. Alt and her family to live in a home that had been scheduled for demolition (Tr. 28). As Mrs. Alt poignantly explained to the Tax Court:

> Well, it was dilapidated, just dilapidated. But we went into that house on Walker. And the name of the church was the Remembrance Church in Walker. And they took all of us in. And we stayed there until, you know, we could recover.
>
> But the terror—it was terror that the IRS has touched all aspects of my life from '91 on. And it continues to this day. I'm never free of them. I just want to be left alone. That's what I really want.
>
> I want—I don't know how long I have yet to live. I'm 74. I'm not all that well. I work six days a week. I work two offices. I work on Saturdays in one of the offices. I spend the—a whole day on Sunday cooking and helping my daughter with her five children. She has five of them.
>
> And so I'm there cooking and trying to prepare meals and help her, so that she can go to work and bring home some money too. I want to live again. I really do, Your Honor. I want to live again. I want to believe again in this great nation. I really do.

---

[4] Tr. refers to the November 1, 2001 transcript of proceedings before the United States Tax Court where Mrs. Alt appeared *pro se*.

My parents were immigrants. They were immigrants. And they did everything to help me make a nice life, a better life than what they had. And they have it all taken away. It just doesn't seem right. And that's why I'm asking for relief.

I need severance. I need financial recovery. And I want closure after all these years. I really want to spend some time with my family in peace, and not have to worry.

Do you realize that I have no credit, none at all. I can't buy a house. I don't have medical insurance other than Medicare. I can't buy any supplementary insurance. I'm trying to save for a home now. That's why I'm working so hard, so that at the end of our days, my husband and I can live in dignity and with respect.

I want that. I don't want to live with children. I want to live in my own independent life. And I want you to know also that Dr. Alt started his practice in 1995. At that time, I helped him. And until 1997, we never got a salary. We never could get a salary. There weren't enough patients coming in to take care of both the overhead and to take care of us.

So our first— our very first 1040, I see here, 1997. That was the first time we got money. And we worked hard for it. It didn't come easy. And I have great respect for our country. And I do want to pay the taxes. And we've always paid the taxes.

And do you know that Dr. Alt was acquitted on his corporation that Karen really worked the hardest on? The corporation—that gave her the most trouble. And he was acquitted. So there is just something wrong here. There is just something wrong. We were decent.

> I mean, to do this to your citizens. That's how I feel. I don't have anything more to say. Your Honor. But thank you for giving me the opportunity to at least tell you my side.

Tr. 28-30.

Mrs. Alt graduated from the University of Michigan in 1953 with a masters degree in education and taught elementary school for 5-years after she and Dr. Alt married (Tr. 48-49). In connection with tax returns and any knowledge she had of tax matters, she testified that somebody always prepared the tax returns and she had absolutely no knowledge of any such matters (Tr. 49-50). Regarding her "style" of living—she had a passion for nice clothes, but always looked for good prices and never bought "designer" clothes (Tr. 95). After Dr. Alt established his medical practice she would occasionally answer phones or, if others were unable to help, make bank deposits. But, her chief or primary occupation was caring for Dr. Alt and the children, while doing church and charity work along with canning, sewing and cooking (Tr. 100-01). Further, Mrs. Alt did not dispute that she and Dr. Alt remained married and together.

Dr. Alt also testified during the Tax Court proceedings, explaining that he graduated from the University of Michigan Medical School in 1953 and had a residency in Internal Medicine which was interrupted while he was in the Korean War. After returning from service, they purchased their first home in Michigan in about 1959 (with money provided by a local realtor, Tr. 192-93). The tax returns which led to his indictment and the Tax Court litigation had been prepared by their daughter, Karen (Dr. Alt's erstwhile co-defendant). It was later determined that Karen (the offending tax preparer) was "manic" but has since received professional treatment and now does very well (Tr. 196). After returning from prison, his renewed

medical practice was fledgling but even at that the IRS showed up claiming monies for taxes due (Tr. 207-09).

Following Dr. Alt's testimony, Mrs. Alt resumed testifying, allowing that she was never forced to sign any documents; Dr. Alt has never been involved in domestic violence—he is "the sweetest man in the world"—and it was unconscionable to even ask such questions (Tr. 232).

**5. The Tax Court Decision.**

On December 17, 2002 the Tax Court filed its decision rejecting Mrs. Alt's innocent spouse importunings. App. 26-42. The Tax Court, while considering 26 U.S.C. § 6015, concluded that "it would not be inequitable to hold her liable for the deficiencies in tax." App. 37, 39. The Tax Court, while claiming to take into account all the circumstances concluded, *inter alia*, [that] Dr. Alt did not conceal pertinent information from Mrs. Alt. App. 37. Further, since they were neither separate nor divorced no relief would be forthcoming. *Id. at* 38a.

**6. Sixth Circuit Appellate Appeal.**

Mrs. Alt, with the benefit of counsel, took an appeal to the Court of Appeals for the Sixth Circuit. On June 3, 2004, the court, in an unpublished opinion, rejected Mrs. Alt's innocent spouse plaints. App. 9-23. The affirming panel traced the partial history of Dr. and Mrs. Alt's interaction with the criminal justice system and the IRS. App. 2-8. Thereafter, the court calibrated the putative § 6015-innocent spouse-components or elements finding that the Tax Court decision merited affirmation. The panel held, *inter alia*, that there was no evidence indicating that Dr. Alt either deceived or concealed information from Mrs.

Alt, *viz.*, Dr. Alt's 1990 federal IRS indictment.[5] App. 13. The panel then suggested that "based on information in the record" that Mrs. Alt would have known of the tax deficiencies and, even if not, a reasonably prudent person would have inquired. Thus, Mrs. Alt knew or should have known of the tax deficiencies. App. 13-17. The court then determined that Mrs. Alt and her family significantly benefited from Dr. Alt's tax chicanery. The Court of Appeals also noted that because Dr. and Mrs. Alt are still married, not separated and remained members of the same household, she was not entitled to innocent spouse relief pursuant to § 6015(c)(3)(A)(i). App. 19. In the end, the court ruled adversely to Mrs. Alt.

## REASONS FOR GRANTING THE WRIT

1. This petition should be granted because 26 U.S.C. § 6015(c)(3)(A)(i) penalizes an "innocent spouse" who elects to maintain the integrity of her marital relationship. As such, the enactment necessarily conflicts with the *right to remain married while invoking innocent spouse protections.* In pertinent part, 26 U.S.C. § 6015(c)(3)(A)(i) states:

> (i) In general—An individual shall only be eligible to elect the application of this subsection if—
>
> (I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

---

[5] The fact-finding by the appellate panel, *vis-á-vis*, Dr. Alt neither deceived [n]or concealed information from Mrs. Alt, while not necessarily pertinent to this petition, is clearly erroneous. There was no record support for the proposition that Dr. Alt *ever* disclosed or revealed the utterly bizarre federal tax filings created by Karen and Dr. Alt.

> (II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

This Court has observed that the sanctity of a marriage shall not be the subject of destruction, and [that] the Constitution accords special protection to "family relationships." Thus, to construct a barrier to "innocent spouse" relief predicated on an ongoing marital relationship is unsupportable in fact or law, and conflicts with settled precedent.

A. *The marital privilege.*

In *Stein v. Bowman*, 38 U.S. (13 Pet.) 209, 223, 10 L.Ed. 129 (1839), the Court explained the rationale that animates the marital privilege:

> This rule is founded upon the deepest and soundest principles of our nature. Principles which have grown out of those domestic relations, that constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife, would be to destroy the best solace of human existence.

Thus, over 160-years ago, the Court looked on the marital relationship with favor and fervor. Nothing has changed (albeit current statistics are such that over 45% of all marriages end in divorce). Stated otherwise, the Court has "blessed" the perpetuation of the marital relationship.

B. *The right to intimate association.*

Later decisions consider the right of intimate association. For example, in *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244 (1984), the Court noted that the right to intimate association, the freedom to choose "to enter into and maintain certain intimate human relationships," is a fundamental element of personal liberty, 468 U.S. at 617-18. Justice Brennan observed that "The court has long recognized that, because of the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State." *Id.* at 618. Thereafter the Court noted:

> The personal affiliations that exemplify these considerations, and that therefore suggest some relevant limitations on the relationship that might be entitled to this sort of constitutional protection, are those that attend the creation and sustenance of a family—marriage * * * . Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. Among other things, therefore, they are distinguished by some attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty.

*Roberts*, 468 U.S. at 619-20. Accord: *McCabe v. Sharrett*, 12 F.3d 1558, 1563 (11th Cir. 1994) ("At *a minimum*, the right of intimate association encompasses the personal relationships that attend the creation and sustenance of a family." (emphasis in original)). And, in *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673 (1978), the Court reviewed the background of marriage while holding a Wisconsin enactment violative of the Equal Protection Clause. In part, Justice Marshall observed:

> Marriage is one of the basic civil rights of man, fundamental to our very existence and survival.

434 U.S. at 383 (quotation marks and citations omitted). The *Zablocki* decision went on to note that the Court's decision "confirmed that the right to marry is of fundamental importance for all individuals" and . . . marriage was characterized as "the most important relation in life" and as "the foundation of the family and of society, without which there would be neither civilization or progress." *Id.* at 384 (citations omitted). Further: The right "to marry, establish a home and bring up children is a central part of the liberty protected by the Due Process Clause." *Id.* at 384 (citations omitted).

Given the constitutional implications and the Court's marriage-imprimatur, one necessarily questions how it is that the IRS can provide enhanced benefits to those that are separated or divorced, as opposed to those that remain wedded.

In *Overton v. Bazzetta*, 539 U.S. 126, 123 S.Ct. 2162 (2003), the Court rejected the proposition that inmates in the State of Michigan were to have the benefit of certain noncontact visits. While reviewing the [constitutional] right of association, the Court cited *Roberts, ante,* explaining that outside of the prison context the constitution supports the maintenance of family relationships, 539 U.S. at 131 (citing, *inter alia, Roberts*).

C. *The Court's references to "innocent spouse" over the last 30-years.*

While the IRS clearly considers "innocent spouse" as nothing more than an annoying cliché, the Court has referred (per petitioner's research) to innocent spouse in two opinions. In *United States v. Mitchell*, 403 U.S. 190, 91 S.Ct. 1763 (1971), the Court considered the difficulties encountered in connection with the collection of IRS deficiencies from unknowing/innocent spouse. The case involved both Mesdames Mitchell and Agnello, each having married their respective spouses in Louisiana. Mrs. Mitchell, having little knowledge of her husband's financial affairs, divorced Emmett, only to learn that he had failed to file federal tax returns for 1955-1959. Post-divorce, Mrs. Mitchell inherited property from her mother and the IRS seized the property predicated on the 1955-1959 tax deficiencies.

Mrs. Agnello remained married to her spouse, Jack, and he had an insurance policy. In 1965, based on tax deficiencies, the IRS filed a notice of lien against Jack's insurance policy. Jack expired in 1966 and the IRS persuaded the district court that it was entitled to the insurance proceeds based on IRS tax deficiencies. The Court of Appeals for the Fifth Circuit granted relief to Mesdames Mitchell and Agnello, 430 F.2d 1 (5th Cir. 1970); 430 F.2d 7 (5th Cir. 1970) (dissent noted in each).

On further review, this Court held that notwithstanding the obvious hardship and exceedingly unfortunate circumstances for two women taxpayers, nevertheless the taxes were due, 403 U.S. at 205. While observing that "if the wives were to prevail here, they would have the best of both worlds (meaning taxes were owed, not paid, returns were not filed and the fault was joint and several—meaning—husband and wife). *Id.* at 205-06. But Justice Blackmun explained that as of January 12, 1971 there was recent legislation:

> These amendments afford relief to an innocent spouse, who was a party to a joint return, with respect to omitted income and fraudulent underpayment. Relief of that kind is the answer to the respondents' situation.

403 U.S. at 206.

Regrettably, Justice Blackmun's observation regarding the potential benefits flowing from the innocent spouse enactment, failed to take into account the government's tenacious resolve in challenging those who seek its benefit see, for example, *Friedman v. Commissioner*, 216 F.3d 537 (6th Cir. 2000) (rejecting IRS challenge to innocent spouse relief); *Resser v. Commissioner*, 74 F.3d 1528 (7th Cir. 1996) (same); *Mitchell v. Commissioner*, 292 F.3d 800 (D.C. Cir. 2002) (CIR successfully challenges innocent spouse relief).[6]

In *Bennis v. Michigan*, 516 U.S. 442, 116 S.Ct. 994 (1996), the Court considered the rights of Tina Bennis, a putative innocent spouse, regarding the proceeds from the forfeiture of a car that Tina's spouse used to engage in an extra-marital sexual liaison with a prostitute in Detroit, Michigan. Seems that Tina's [then] spouse, John, forgot to return directly home after completing his day's work at a local plant. Rather, he detoured to an area frequented by prostitutes, where he had the misfortune of being arrested in connection with soliciting a prostitute. Based on a local forfeiture ordinance, the car (valued at $600) was forfeited (over Tina's objection). The Court, after providing an overview of forfeiture statutes, affirmed the forfeiture of the jointly owned car. Chief Justice Rehnquist's opinion for

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[6] The Commissioner's merit brief in the case below cited over 25-tax court and federal appellate innocent spouse decisions. Again, it is clearly obvious (and obviously clear) that the IRS *resists* granting innocent spouse relief in almost all cases.

the Court made short-work of any notion that Tina's innocent spouse status warranted her having the opportunity to share in the proceeds from the sale of the forfeited car. The dissent took a contrary view, observing that the forfeiture statutes were misread by the majority and were never intended to deprive an innocent owner (without complicity in the underlying offense). In part, Justice Stevens (with Justices Souter, Breyer and Kennedy) observed:

> Finally, the States' decision to deter "johns from using cars *they* own (or co-own) to contribute to neighborhood blight," *ante*, at 1003 (emphasis added), surely does not justify the forfeiture of that share of the car owned by the innocent spouse.

516 U.S. at 470 n. 14.[7]

D. *Summarization of reasons for granting this petition.*

The decisions in *United States v. Mitchell* and *Bennis v. Michigan* fail to provide any cogent analysis of the question presented. And, the decisions in *Stein v. Bowman*, *Roberts v. United States Jaycees* and *Overton v. Bazzetta*, endorse the general proposition that marriage remains among the fundamentally protected rights of citizens in the United states. But none address that which is before the Court.

On balance, the constitutional conundrum as presented in this petition pits the right to remain married and assert innocent spouse protections, and the awesome power of the government to enact legislation encouraging separation or divorce as a method of securing innocent spouse relief (e.g.,

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[7] Justice Kennedy's dissent took issue with the majority regarding the use of Admiralty analogies, 516 U.S. at 472.

§ 6015(c)(3)(A)(i) mandates that the petitioning [innocent] spouse be separated or divorced before qualifying for relief). In the case at hand, Dr. and Mrs. Alt have celebrated their *Golden Wedding Anniversary* (married January 10, 1954). Should Mrs. Alt, our 78-year-old petitioner, have severed her 5-decade marriage to Dr. Alt in order to qualify for that section of innocent spouse relief which demands divorce/separation? Apparently the respondent—IRS Commissioner—so contends by virtue of having endorsed 26 U.S.C. § 6015(c)(3)(A)(i).

Mrs. Alt's petition is straightforward and given today's reality, it provides an appropriate vehicle to resolve the First Amendment tussle—remain married or suffer the inability to seek innocent spouse relief per § 26 U.S.C. § 6015(c)(3)(A)(i).[8]

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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ROSALINDA ALT

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[8] Mrs. Alt, pretermits an analysis of the innocent spouse components in 26 U.S.C. § 6015 as reproduced in the decision below. On merit briefing, each component will be considered and analyzed with appropriate citations to authority.

# APPENDIX

NOT FOR FULL-TEXT PUBLICATION
No. 03-1265

Filed
JUN 3, 2004
LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALINDA ALT,

Plaintiff-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES TAX COURT

/

**BEFORE: SUHRHEINRICH** and **GIBBONS**, Circuit Judges; and **LAWSON**, District Judge*

**SUHRHEINRICH., J.** Petitioner-Appellant Rosalinda Alt (Petitioner) appeals the Tax Court's decision that she is not entitled to innocent spouse relief from joint and several liability pursuant to 26 U.S.C. § 6015 for the taxable years 1982 through 1989. For the reasons that follow, we AFFIRM the decision of the Tax Court.

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* The Honorable David M. Lawson, United States District Judge for the Eastern District of Michigan, sitting by designation.

## I. Facts

Petitioner is a seventy-six-year-old married woman. She received her bachelor's degree from Wayne State University in 1948 and her master's degree in education from the University of Michigan in 1953. In 1954, Petitioner married her husband, William J. Alt, M.D., a graduate of the University of Michigan medical school with a practice in the area of internal medicine and a specialty in cardiovascular disease. Petitioner and Dr. Alt have four children: Nan, Karen, Robert, and Gretchen. Although petitioner had worked as a first grade teacher, subsequent to her marriage and the birth of her first child in 1955, Petitioner became a stay-at-home mother.

Throughout their marriage, Petitioner and Dr. Alt paid professionals to prepare their tax returns for them. When he began his medical practice, Dr. Alt hired Mr. Ron Schulz to prepare the family's tax returns. After Mr. Schulz retired in the early 1980s, Petitioner's daughter, Karen Lind Alt (Karen), who had started a financial corporation, K.L. Financial, managed Petitioner's and Dr. Alt's financial affairs, including preparing tax returns.

In the years following the assumption of her parents' financial concerns, Karen created more than forty corporations through which she funneled Dr. Alt's income, resulting in substantial tax deficiencies for the taxable years 1982 through 1989 (the years at issue).[1]

During the years at issue, Petitioner and Dr. Alt lived a "fine life." Dr. Alt drove a Ford Mustang and Petitioner had a Cadillac and a Buick. Each month Petitioner received approximately $4,000 in cash from Dr. Alt to pay

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[1] See *United States v. Alt*, 996 F.2d 827 (6th Cir. 1993), and *United States v. Alt*, 83 F.3d 779 (6th Cir. 1996), for a more detailed history of the tax deficiencies at issue in this case.

the household expenses. Petitioner and Dr. Alt purchased numerous properties, including a 600-acre riverfront property on which they were constructing an approximately 10,000 square foot Georgian Mansion at an estimated cost of one to four million dollars. Dr. Alt attended continuing medical education courses approximately twice a month in various places, including New York City and Tucson, Arizona. Petitioner accompanied her husband on his trips approximately once per month. Petitioner was also able to purchase several valuable antiques through these years. In addition, Petitioner and Dr. Alt helped their children to purchase or remodel their houses by "giving them financial assistance," potentially in excess of $100,000. They also helped purchase or purchased a business for their son.

On or before April 15, 1985, the Commissioner issued a statutory notice of deficiency to Petitioner and Dr. Alt regarding the 1981 taxable year. Petitioner and Dr. Alt filed a petition with the Tax Court to contest the proposed determination of the 1981 income tax deficiency of approximately $83,655 and, in 1986, they executed a stipulated decision that the court entered accordingly. Petitioner testified before the Tax Court that she had "signed something," but "[didn't] know the agreement I made" and "[didn't] have the capacity" to inquire. She also did not think that she had a duty to inquire.

On April 5, 1989, the Commissioner sent Petitioner and Dr. Alt a notice of deficiency for the 1985 taxable year in the amount of $68,123.95. The Commissioner also claimed additions to tax totaling $20,437.00 for negligence and substantial understatement of tax liability under 26 U.S.C. §§ 6653 and 6661.

Then, in 1990, Dr. Alt and Karen were indicted for tax evasion and various other federal crimes. After Dr. Alt and Karen were indicted but prior to the trial, Petitioner

withdrew varying amounts of money from the corporations' "three different banks a day, three different times a week, for multiple weeks." The following year. Dr. Alt and Karen were convicted and imprisoned. In 1993, a panel of this court reversed their convictions on the ground of improper jury instruction and remanded the case. *United States v. Alt*, 996 F.2d 827 (6th Cir. 1993). Although Dr. Alt and Karen were not retried, Dr. Alt ultimately pled guilty to a misdemeanor offense and was sentenced to time already served.

On October 10, 1991, the Commissioner sent Petitioner and Dr. Alt a notice of deficiency for the taxable years 1982, 1983, 1984, 1986, 1987, 1988, and a notice of increases in their deficiencies for the taxable years 1987 and 1988. The Commissioner also sent Dr. Alt a separate notice of deficiency for the taxable year 1989. On January 10, 1992, Petitioner and Dr. Alt jointly filed a petition with the Tax Court disputing the IRS's notices of deficiency. Dr. Alt filed a separate petition on January 13, 1992. Then on February 26, 1993, the parties filed a stipulation of settlement with the Tax Court, in which Petitioner and Dr. Alt agreed that they were liable for the following deficiencies and additions to tax for the 1982, 1983, 1984, 1986, 1987, and 1988 taxable years:

| | | Addition to Tax (Based on former IRC)* | | |
|---|---|---|---|---|
| Year | Deficiency | Sec. 6653(b)(1) | Sec. 6653(b) | Sec. 6661 |
| 1982 | $78,510 | $39,255 | --- | $19.628 |
| 1983 | $176,832 | $88,416 | --- | $44,208 |
| 1984 | $160,170 | $80,085 | --- | $40,043 |
| 1986 | $222,252 | $166,689 | --- | $55,563 |
| 1987 | $230,686 | $173,014 | --- | $57,671 |
| 1988 | $221,009 | --- | $165,756 | $55,252 |

*Further additions to tax were applied to the taxable years 1983, 1983, and 1984 under Section 6653(b)(2), and to the taxable years 1986 and 1987 under Section 6653(b)(1)(B). The amount is equal to 50 percent of the interest on the portion of the underpayment.

On April 27, 1993, the Tax Court entered a decision pursuant to this stipulation of settlement. Then, in March 1994, Petitioner and Dr. Alt moved to vacate the Tax Court's decision on the basis of the reversal of Dr. Alt's criminal conviction. The motion was denied. *Alt v. Commissioner*, 68 T.C.M.(CCH) 38 (1994).

In the meantime, on September 15, 1992, the IRS filed a civil suit against Petitioner and Dr. Alt in the United States District Court for the Western District of Michigan seeking a judgment to foreclose upon back taxes, various statutory penalties for fraud, understatement, negligence, and interest for the taxable years 1981 through 1989. The district court's judgment against Dr. Alt and Petitioner was upheld by this court in *United States v. Alt*, 83 F.3d 779 (6th Cir. 1996). Petitioner and Dr. Alt's as-

sets that were subject to collection by the judgment included, but were not limited to: Dr. Alt's pension fund of about $500,000; six houses, each valued at approximately $200,000; over 600 acres of riverfront property in Ottawa County, Michigan; a nearly-completed personal residence having a living space of approximately 10,000 square feet built on 600 acres of riverfront property; and antique furniture.

Following the seizure of their assets. Petitioner and Dr. Alt moved to a "dilapidated" house that had been bequeathed to a church. Dr. Alt reestablished his medical practice in 1995 after serving twenty-five months in prison, doing business as "Clinical Cardiology—Internal Medicine P.C." in Holland, Michigan. Petitioner worked part-time as a receptionist at her husband's office and also worked a her daughter's office, Clinical Psychiatric Medicine in Grandville. Petitioner and Dr. Alt earned the following amounts:

| Year | Dr. Alt | Petitioner | Total |
|---|---|---|---|
| 1997 | $13,200 | $39,375 | $52,575 |
| 1998 | $35,246 | $105,655 | $140,901 |
| 1999 | $53,761 | $83,987 | $137,748 |
| 2000 | $100,800 | $74,154 | $174,954 |

All of Petitioner's and Dr. Alt's children are adults. They financially support no one other than each other. As of August 7, 2001, Petitioner's and Dr. Alt's income tax liabilities, including accrued interest and penalties, were:

| Year | Liability |
|---|---|
| 1982 | $300,685 |
| 1983 | $627,885 |
| 1984 | $507,073 |
| 1985 | $184,043 |
| 1986 | $676,255 |
| 1987 | $648,735 |
| 1988 | $567,747 |
| Total | $3,512,423 |

On or about April 14,2000, Petitioner filed a request for innocent spouse relief with the IRS. Petitioner requested relief under 26 U.S.C. § 6015(b), (c), and(f) for the taxable years 1982 through 1989. On August 29, 2000, IRS agent Susan Carene met with Petitioner to discuss the request. Carene determined that Petitioner was not entitled to relief under § 6015(b), (c) or (f). The IRS informed Petitioner, by two letters dated September 29, 2000, that she was not entitled to relief under § 6015(b), (c), and (f) for the taxable years 1982 through 1988, and that no relief was available under § 6015 for 1989 because Petitioner had not filed a joint return for that year. On October 30, 2000, the IRS received Form 12509, Statement of Disagreement, from Petitioner disputing the determinations. The IRS sent Petitioner a final notice on December 8, 2000, determining that she was not entitled to relief.

On March 2, 2001, Petitioner filed a petition with the Tax Court seeking review of the IRS's denial of innocent spouse relief under § 6015, and the matter proceeded to trial with the Petitioner representing herself. Petitioner was seventy-four years old at the time of the trial. She stated that she had lost her thyroid and was suffering from post-traumatic stress syndrome, anxiety, and depres-

sion. After the trial, the tax court entered a decision for the IRS finding that it was not inequitable to hold Petitioner liable for the tax deficiencies. The Tax Court stated:

> Held, further, P is not entitled to relief under I.R.C. sec. 6015 for 1989 because she did not file a joint return. *Raymond v. Commissioner*, 119 T.C. 191, (2002).
>
> Held, further, pursuant to I.R.C. sec. 6015(b)(l)(D), P is not entitled to relief under I.R.C. sec. 6015(b) for taxable years 1982 to 1988 because, taking into account all facts and circumstances, it is not inequitable to hold P liable for the deficiencies.
>
> Held, further, pursuant to I.R.C. sec. 6015(c)(3)(A)(i), P is not entitled to relief under I.R.C. sec. 6015(c) for taxable years 1982 to 1988 because P and H are still married, have not separated, and remained members of the same household during the 12-month period preceding the filing of the election by petitioner.
>
> Held, further, R did not abuse his discretion in denying P relief under I.R.C. sec. 6015(f) for taxable years 1982 to 1988 because we held that, taking into account all facts and circumstances, it is not inequitable to hold P liable for the deficiencies under I.R.C. sec. 6015(b)(l)(D).

Petitioner appealed.

## II. Standard of Review

"This Court reviews the Tax Court's findings of fact for clear error and its application of law *de novo*" *Friedman v. Commissioner*, 216 F.3d 537, 541 (6th Cir. 2000). The Tax Court's denial of relief on the basis that it is not inequitable to hold Petitioner liable for the deficiencies

is reviewed for clear error. *Silverman v. Commissioner*, 116 F.3d 172, 173 (6th Cir. 1997).

## III. Analysis

Petitioner raises one issue on appeal: whether the Tax Court erred in denying her innocent spouse relief under 26 U.S.C. § 6015. Petitioner does not specifically challenge the grounds on which the Tax Court denied her relief, namely, that it was not inequitable to hold her liable. Nevertheless, Petitioner argues that, because she was "reared in a culture that demanded women refrain from questioning [the] breadwinner regarding fiscal matters," she neither knew nor had reason to know of the tax deficiencies and the Tax Court erred in finding that "taking into account all of the facts and circumstances . . . it would not be inequitable to hold [her] liable for the deficiencies." *Alt v. Commissioner*, 119 T.C. 306, 313 (2002).

A spouse who files a joint tax return is jointly and severally liable for the tax computed. 26 U.S.C. § 6013(d)(3). Relief from joint and several liability is available in limited circumstances pursuant to 26 U.S.C. § 6015(b), (c), or (f). The petitioner bears the burden of proving that she has met all the prerequisites for relief except as otherwise provided in § 6015. *Shea v. Commissioner*, 780 F.2d 561, 565 (6th Cir. 1986).

### A. Section 6015(b)

A taxpayer is eligible for innocent spouse relief pursuant to § 6015(b) if the taxpayer meets five conditions:

> (A) a joint return has been made for a taxable year;

> (B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;
>
> (C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;
>
> (D) *taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement'*, and
>
> (E) the other individual elects . . . the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election

Section 6015(b)(l) (emphasis added). As the Tax Court noted, since § 6015(b)(l)(D) is identical to the former § 6013(e)(1)(D)[2] except that "the other spouse" is replaced

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[2] Former Section 6013(e)(l) provided:

> Sec. 6013(e). Spouse Relieved of Liability in Certain Cases.—
>
> (1) In general.—Under regulations prescribed by the Secretary, if—
>
> (A) a joint return has been made under this section for a taxable year,
>
> (B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,
>
> (C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement,
>
> (D) taking into account all the facts and circumstances, it is

(continued...)

with "the other individual," cases interpreting former § 6013(e) are instructive in the present case.

The Tax Court denied Petitioner relief because it determined that she did not meet the requirements of subsection (D), that "taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement." Whether it is inequitable to hold an individual liable for a tax deficiency "requires a careful consideration of all possible factors that are relevant" to the inquiry. *Silverman*, 116 F.3d at 175 (also stating that "[t]he innocent spouse provision should be construed and applied liberally in favor of those for whom it was designed to protect"). Those factors include: (1) the culpable spouse's wrongdoing directed toward the requesting spouse; (2) the requesting spouse's actual knowledge or reason to know of the tax deficiency; (3) the benefit the requesting spouse received from the tax deficiency in the past; (4) the requesting spouse and the culpable spouse's current marital status; and (5) the probable economic hardship that might be

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(...continued)

> inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

*Alt*, 119 T.C. at 313, n. 7. As the Tax Court noted, the new Section 6015 was enacted to replace former Section 6013(e) in order to make relief from joint and several liability more accessible. *Id.* (citing Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 sec. 3201(a), 112 Stat. 734; H. Conf. Rept. 105-599, at 249 (1998), 1998-3 C.B. 747, 1003).

caused by the enforcement of joint and several liability. *Hayman v. Commissioner*, 992 F.2d 1256, 1262 (2d Cir. 1993) (relevant factors regarding inequity including significant benefit to the requesting spouse and whether the deficiencies result from "concealment, overreaching, or any other wrongdoing on the part of the 'guilty ' spouse") (citation omitted); *Friedman v. Commissioner*, 53 F.3d 523, 532 (2d Cir. 1995) (factors regarding the equity inquiry include any significant benefits the requesting spouse received as a result of the understatements, the requesting spouse's participation in wrongdoing, and the effect of a subsequent divorce or separation); *Reser v. Commissioner*, 112 F.3d 1258, 1269-70 (5th Cir. 1997) (stating that the factors in determining inequity include whether the requesting spouse significantly benefitted from the understatement of tax; whether the requesting spouse has been deserted, divorced or separated from the other spouse, and the probable hardships that would befall the requesting spouse if the liability were not relieved); Rev. Proc. 2003-61, Sec. 4.03,2003-32 I.R.B. 296 (listing various factors in determining equity, including marital status, economic hardship and knowledge or reason to know).[3]

### 1. Culpable Spouse's Wrongdoing

The first relevant factor in determining the equity of holding a taxpayer liable for the deficiency is "[w]hether the failure to report correctly tax liability results from 'concealment, overreaching, or any other wrongdoing' on the part of the 'guilty' spouse." Hayman, 992 F.2d at 1262. The record in this case does not contain any evi-

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[3] Rev. Proc. 2003-61 applies to § 6015(f) but the Tax Court has held that the equitable factors considered under § 6015(b)(l)(D) are the same as those considered under § 6015(f).

dence that Dr. Alt either deceived Petitioner or concealed any information from her regarding their financial affairs or tax returns. Petitioner argues that the 1990 indictment charging Dr. Alt with conspiracy and substantive tax evasion counts is evidence of his concealment. However, although the original 1990 indictment might arguably demonstrate concealment from the IRS, it does not demonstrate that Dr. Alt concealed anything from Petitioner. In fact, during the years at issue, Petitioner made numerous deposits on behalf of Dr. Alt, and after his indictment but prior to the criminal trial Petitioner withdrew various amounts of money from the corporate entities' bank accounts. These acts, coupled with the fact that Petitioner signed the tax returns, undermine her concealment argument. In light of the lack of any evidence suggesting that Dr. Alt concealed his financial affairs from his wife, there is no clear error in the Tax Court's finding that there was no concealment.

**2. Requesting Spouse's Actual Knowledge or Reason to Know**

The second factor, which is closely related to the first, is whether the requesting spouse knew or had reason to know of the deficiency. Although the Tax Court did not expressly address this issue, the factor is included in Section 6015(b) as a separate element, and it should not be minimized in making the inequity determination. "The standard to be applied in determining whether a taxpayer had reason to know of omissions is whether *a reasonable person under the circumstances of the taxpayer* at the time of signing the return could be expected to know of the omissions." *Shea*, 780 F.2d at 566 (quoting the Tax Court opinion). This requires a determination of (1) the circumstances that faced the requesting spouse, and (2) whether a reasonable person in the same posi-

tion would have known of the omissions. The factors to be considered include:

> 1) the spouse's level of education; 2) the spouse's involvement in the family's business and financial affairs; 3) the presence of expenditures that appear lavish or unusual when compared to the family's past levels of income, standard of living, and spending patterns; and 4) the culpable spouse's evasiveness and deceit concerning the couple's finances.

*Streck v. Commissioner*, No. 98-1064, 1999 U.S. App. LEXIS 13623, at *8 (citing Shea, 780 F.2d at 567).

Petitioner holds a bachelor's degree and a master's degree in education. When evaluating the weight to be given to education, courts have examined the type of education received, specifically, whether the education provided a "special knowledge of complex tax issues." See *Reser v. Commissioner*, 112 F.3d 1258, 1268 (5th Cir. 1997) ("Reser's education, albeit advanced, provided her with no special knowledge of complex tax issue such as basis computation."). Petitioner's education provides no special knowledge of tax. However, lack of knowledge of the tax consequences of the income received, or of its proper treatment on the return, constitutes mere ignorance of law that, without more, cannot establish that the taxpayer lacked reason to know of the tax underpayment. *Mitchell v. Commissioner*, 292 F.3d 800, 803-04 (D.C. Cir. 2002) (taxpayer who knew of the unreported funds was not entitled to relief despite the fact that she didn't know the funds constituted taxable income).

Second, although no evidence indicates that Petitioner was directly involved in the corporations created by Karen, the record does indicate that she was, to some extent, involved in the family's business and the family's financial affairs. Petitioner paid household expenses, she made

deposits and withdrawals for Dr. Alt and Karen, and several corporations were her nominees.[4]

Furthermore, from at least 1975 through 1981, Petitioner and Dr. Alt had deficiencies/assessments determined on their filed tax returns in each year except 1978. Petitioner "was aware that things had happened in the past, but . . . thought that they had all been settled." Moreover, during the years at issue, in 1985, Petitioner was aware that she and Dr. Alt had petitioned the Tax Court concerning their tax deficiencies in 1981. Although Petitioner's knowledge of previous tax deficiencies does not show knowledge regarding the 1982 through 1988 deficiencies, it does indicate that Petitioner was aware of the family finances and should have been alert to other problems.

Third, although the living style of Petitioner and Dr. Alt was good prior to the years at issue, the family expenditures during the years at issue were unusually lavish when compared to the past, as evidenced by the purchases or renovations of several parcels of real estate for themselves and for their children, as well as their substantial financial assistance to their children. Fourth, as stated previously, there is no evidence of either evasiveness or deceit on the part of Dr. Alt.

The next inquiry is whether a reasonable person faced with these circumstances would know of the omissions.

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[4] Karen had listed her family members, including Petitioner, as officers of the corporations. Some of the corporations were nominees of Petitioner and Dr. Alt. Petitioner and Dr. Alt paid their personal expenses, such as utilities, clothes and trips, through the corporate bank accounts. They did not have personal accounts. Petitioner also made deposits to the corporate bank accounts on behalf of Dr. Alt and Karen whenever she was asked to do so.

> A person has reason to know of a fact if he had information from which *a person of ordinary intelligence* which such person may have, or of the *superior intelligence* which such person may have, would infer that the fact in question exists or that there is such a substantial chance of its existence that, *in exercising reasonable care with reference to the matter in question*, his action would be predicated upon the assumption of its possible existence.

*Shea*, 780 F.2d at 565 (quoting *Sanders v. United States*, 509 F.2d 162, 167 (5th Cir. 1975) (emphasis added). This passage suggests two related factors. First, if a person possesses ordinary or greater intelligence, and second, if that person has information from which an individual exercising reasonable care would conclude that the ultimate fact exists, a court may infer that the person knew or should have known the ultimate fact.

Based on the information in the record, we believe that a reasonable person in Petitioner's situation would have known of the tax deficiencies. Not only was Petitioner involved to some extent in the business activities of the daughter's corporations, but she was aware of the ongoing tax problems of her family, both prior to and during the years at issue. Furthermore, there is no evidence of concealment and Petitioner had witnessed the unusual expenditures of the family during the years at issue. A reasonable person with Petitioner's intelligence and education alone might not have been expected to know of the omissions, but suspicious situations in the instant case should have led to further inquiry and discovery of the omissions.

Although Petitioner alleges that she had no capability to inquire into pertinent financial records, she also admitted that she never felt that she had such a duty, and appar-

ently she never tried. Petitioner argues that she was reared in a culture that demanded that women refrain from questioning their breadwinner regarding fiscal matters. The essence of Petitioner's argument is that she had no duty to exercise reasonable care because she was taught not to do so. "Reasonable prudence," however, must be determined based on the conduct of a reasonable person. Petitioner's argument is merely an explanation for her personal lack of actual knowledge, and does not relate to what a reasonable person would have known.

The present case is similar to *McGee v. Commissioner*, 979 F.2d 66 (5th Cir. 1992), where:

> Taxpayer was aware that her husband earned income from his dental practice, although she did not know the exact amount. She was aware of [her husband's] irresponsible behavior in financial matters, yet never questioned him regarding the amounts he earned from his dental practice or whether tax returns were being timely filed. She made no effort to review tax documents before signing them. Furthermore, taxpayer testified at trial that she could have determined [her husband's] income for the years at issue by asking [her accountant].

*Id.* at 70. The Fifth Circuit found that "[the taxpayer] did not act as a reasonably prudent person with an equal level of knowledge would under the surrounding circumstances with regard to determining the amount of [her husband's] income for the years in question" and that the Tax Court did not commit clear error in finding that taxpayer knew or should have known of the item of community income and denying innocent spouse relief. *Id.* Similarly, it would not be clear error to find that Petitioner knew or should have known of the deficiencies.

**3. Significant Benefit**

The third factor in determining the equities is the existence of a significant benefit to the spouse claiming relief as a result of the tax deficiency. *Silverman*, 116 F.3d at 175. "Normal support, measured by the circumstances of the parties, is not considered a significant benefit for purposes of this determination." *Friedman*, 53 F.3d at 532. (citation omitted). "However, amounts received by a spouse in excess of normal support do constitute a significant benefit." *Resser v. Commissioner*, 74 F.3d 1528, 1543 (7th Cir. 1996) (citation omitted). "A direct or indirect benefit may be evidenced by (1) a transfer of property, [ ] (2) a spouse's receipt of more than she otherwise would as part of a divorce settlement, [ ] or (3) an accumulation of savings or other assets in lieu of present consumption. [ ] This list, however, is not exclusive." *Reser*, 112 F.3d at 1270. (footnotes omitted).

The Tax Court found that Petitioner benefitted significantly from the tax understatement. Petitioner's family's living style changed substantially during the years at issue as compared to the past. Prior to the years at issue. Petitioner and Dr. Alt owned a 2,500-square-foot home built in 1966. They fully paid for their children's tuition and living expenses to attend college, for Nan to go to medical school, and for Karen to go to law school. They also bought a condominium for Dr. Alt's mother. The family took a ten-day vacation to Italy in 1971.

During the years at issue, Dr. Alt had a pension fund of $500,000. He drove a Mustang, and Petitioner drove a Cadillac and a Buick. Petitioner received cash in the amount of approximately $ 4,000 per month from Dr. Alt to pay the monthly household expenses. Petitioner went on a trip approximately once per month with her husband, while he took medical courses around the country. Petitioner was also able to purchase valuable antiques through

all these years. In addition, the family purchased a 600-acre riverfront property on which an approximately 10,000 square foot Georgian Mansion was being built at an estimated cost of one to four million dollars. Furthermore, Petitioner and Dr. Alt either purchased houses for their children or helped them renovate their houses with extremely generous financial assistance. The family's unusual expenditures demonstrate a substantially enhanced living standard as compared to the past.

In sum, Petitioner and Dr. Alt accumulated assets with the savings from the tax deficiencies. Petitioner enjoyed the "fine life" to the same extent as her husband and held similar expectations regarding their accumulated assets to be enjoyed in the future. Thus the Tax Court's finding that the Petitioner benefitted from the tax savings is not clearly erroneous.

**4. Marital Status**

The fourth relevant factor is "whether the spouse seeking relief has been deserted or divorced or separated from the other spouse." *Reser*, 112 F.3d at 1270. Petitioner and Dr. Alt have remained married and "Petitioner has not been left by her husband to deal with the tax liabilities alone." 119 T.C. No. 306, 315 (2002). The Tax Court found that "petitioner continues to enjoy the lifestyle and financial security that are largely attributable to her husband's assets and income." *Id.* Both Petitioner and Dr. Alt are currently working. Petitioner works as a receptionist for her daughter and for her husband. In 2000, Petitioner and Dr. Alt had a combined income of $ 174,954. Therefore, the current marriage status also weighs against Petitioner, and the Tax Court's finding in this regard was not clear error.

**5. Probable Economic Hardship**

The fifth factor to be considered is the probable economic hardship on the requesting spouse. *Shea*, 780 F.2d at 564 (stating that the former 6013(e)(l) "was adopted to prevent hardships which resulted when one spouse did not report income, thereby leaving the `innocent spouse' to pay the deficiencies"); *Reser*, 112 F.3d at 1270 (considering as a relevant factor in determining inequity the probable hardships that would befall the requesting spouse). Petitioner presented no convincing evidence regarding any economic hardship that might result from the tax liability, as economic hardship generally refers to the inability to pay reasonable basic living expenses. See Treas. Reg. § 301.6343-l(b)(4).[5]

Petitioner and Dr. Alt had accumulated tax deficiencies as of 2001 totaling $3,512,423. Petitioner testified that, after the IRS seizure, they were forced to move into a dilapidated church house, she suffered some illnesses, she has Medicare but no other health insurance, and she cannot get credit. Petitioner and Dr. Alt's annual income from 1998 to 2000, however, was $140,901, $137,748, and $174,954 respectively. The Tax Court did not clearly err

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[5] Treas. Reg. § 301.6343-l(b)(4) provides:

Economic hardship—(i) General rule. The levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

in finding that the family will be able to pay reasonable basic living expenses if relief is not granted.

The Tax Court's conclusion that it would not be inequitable to hold Petitioner liable for the deficiencies is well supported by the five factors that we used to make that determination. First, even if Petitioner did not know of the deficiencies, she at least had reason to know since there is no evidence of concealment. Second, there is evidence that Petitioner significantly benefitted from the deficiencies as a family member during the years at issue. Lastly, Petitioner and Dr. Alt are still married and there is no evidence, of a probable economic hardship on Petitioner. Under all these circumstances, the Tax Court did not clearly err in finding that, taking into account all facts and circumstances, it is not inequitable to hold Petitioner liable for the deficiencies. Since Petitioner does not meet the requirement of § 6015(b)(l)(D), she is not eligible for the mandatory relief under § 6015(b).

### B. Section 6015(f)

Section 6015(f) provides relief at the discretion of the Secretary if a taxpayer establishes two elements:

> (f) Equitable relief.—Under procedures prescribed by the Secretary, if—
>
> (1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and
>
> (2) relief is not available to such individual under subsection (b) or (c).
>
> the Secretary may relieve such individual of such liability.

As the Tax Court noted, § 6015(b)(l)(D) is identical to § 6015(f)(l) except that "*the deficiency in tax for such taxable year attributable to such understatement*" is replaced with "any unpaid tax or any deficiency (or any portion of either)" in § 6015(f)(l). Therefore, the factual finding under I.R.C. § 6015(b)(l)(D), that taking into account all facts and circumstances it is not inequitable to hold Petitioner liable for the deficiencies, also applies to § 6015(f)(l). Since Petitioner does not meet the requirements of § 6015(b)(l)(D), she is not eligible to be considered for the Secretary's discretionary relief under § 6015 (f)(1).

### C. Section 6015(c)

Initially, Petitioner brought a claim under § 6015(c) as well. The Tax Court concluded that Petitioner was not entitled to relief under this section because she was married to Dr. Alt at the time she filed her petition, had not separated from him, and had lived in the same household during the twelve-month period preceding the filing.[6] Since Petitioner does not challenge the Tax Court's factual finding regarding her marital status,

---

[6] Section 6015(c)(3)(A)(i) provides:

> (i) In general.—An individual shall only be eligible to elect the application of this subsection if—
>
> (I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or
>
> (II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

which disqualifies Petitioner from relief pursuant to § 6015(c)(3)(A)(i), this Court need not address the issue.

### D. 1989 tax return

For the tax years 1982 through 1988, Petitioner and Dr. Alt filed their United States Individual Income Tax Returns as "married filing joint return." For the 1989 tax year, however. only Dr. Alt signed the tax return. According to IRS records, Petitioner did not file a federal income tax return in her own name for 1989. Therefore, the IRS construed Dr. Alt's return as filed "married filing separate." Petitioner agrees that "this appeal cannot serve to discharge any I.R.S. deficiency) for 1989." Therefore, this Court need not address this issue.

## IV. Conclusion

For the foregoing reasons, the judgment of the Tax Court is **AFFIRMED.**

UNITED STATES COURT OF APPEALS
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 48202-3988

Leonard Green
Clerk

Diane Kuntz
(513) 564-7014
www.ca6.uscourts.gov

Filed: June 3, 2004

Allan A. Ackerman
B. John Williams Jr.
Regina S. Moriarty
Teresa E. McLaughlin

RE: 03-1265
Alt v. CIR
District Court No. 2964-01

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,
Leonard Green, Clerk

/s/ Diane Kuntz
(Ms.) Diane Kuntz
Case Manager

Enclosures

cc:
Honorable Juan F. Vasquez
Mr. Charles S. Casazza

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

---

No: 03-1265

---

Filed: July 27, 2004

ROSALINDA ALT

Petitioner - Appellant

V.

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee

**MANDATE**

Pursuant to the court's disposition that was filed 6/3/04 the mandate for this case hereby issues today.

A True Copy.

COSTS: **NONE**

Attest/:

Filing Fee .....$
Printing.....$

Illegible

Total

/s/_____
Deputy Clerk

119 T.C. No. 19

UNITED STATES TAX COURT

ROSALINDA E. ALT, Petitioner *v.*
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 2964-01. Filed December 17, 2002.

P filed joint tax returns for taxable years 1982 to 1988 with H. H filed a return in 1989 with the filing status of "Married filing separate." P did not file a tax return in 1989. R determined deficiencies against P and H for taxable years 1982 to 1988. P sent R a Form 8857, Request for Innocent Spouse Relief, for taxable years 1982 to 1989. R sent P a notice of determination determining that P was not entitled to relief under I.R.C. sec. 6015(b), (c), and (f) for taxable years 1982 to 1988. R sent P a letter determining that no relief under I.R.C. sec. 6015 was available for 1989 because P did not file a joint return.

*Held*: Pursuant to I.R.C. sec. 6015 (e), we have jurisdiction to review the denial of P's request for relief under I.R.C. sec. 6015 for taxable years 1982 to 1988, and we have jurisdiction to review R's(f) failure to make a determination on P's request for relief under I.R.C. sec. 6015 for 1989.

*Held, further*, P is not entitled to relief under I.R.C. sec. 6015 for 1989 because she did not file a joint return. *Raymond v. Commissioner*, 119 T.C. 191 (2002).

*Held, further*, pursuant to I.R.C. sec. 6015(b)(1)(D), P is not entitled to relief under I.R.C. sec. 6015(b) for taxable years 1982 to 1988 because, taking into account all facts and circumstances, it is not inequitable to hold P liable for the deficiencies.

*Held, further*, pursuant to I.R.C. sec. 6015(c)(3)(A)(i), P is not entitled to relief under I.R.C. sec. 6015(c) for taxable years 1982 to 1988 because P and H are still married, have not separated, and remained members of the same household during the 12-month period preceding the filing of the election by petitioner.

*Held, further*, R did not abuse his discretion in denying P relief under I.R.C. sec. 6015(f) for taxable years 1982 to 1988 because we held that, taking into account all facts and circumstances, it is not inequitable to hold P liable for the deficiencies under I.R.C. sec. 6015(b)(1)(D).

Rosalinda E. Alt, pro se.

*A. Gary Begun*, for respondent

VASQUEZ, *Judge*: This case arises from a request for relief under section 6015[1] with respect to petitioner's taxable years 1982 to 1989 (years at issue). The issues for decision are: (1) Whether petitioner is entitled to relief under section 6015(b) for the years at issue; (2) whether petitioner is entitled to relief under section 6015(c) for the years at issue; and (3) whether respondent abused his discretion in denying petitioner relief under section 6015(f) for the years at issue.

## FINDINGS OF FACT

On August 13, 2001, respondent filed a Motion to Show Cause Why Proposed Facts In Evidence Should Not Be Accepted As Established under Rule 91(f). Respondent

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times. All Rule references are to the Tax Court Rules of Practice and Procedure.

attached to his motion a proposed stipulation of facts and exhibits. On August 14, 2001, the Court issued an Order to Show Cause Under Rule 91(f), requiring petitioner to respond as to why matters set forth in respondent's motion should not be deemed admitted. On November 1, 2001, the Court made absolute its Order to Show Cause Under Rule 91(f), providing that the facts and evidence set forth in respondent's proposed stipulation of facts were deemed established, and exhibits in the proposed stipulation of facts were received into evidence and made a part of the record of inc case. The stipulation of facts, deemed admissions, and the attached exhibits are incorporated herein by this reference.

At the time she filed her petition, petitioner resided in Douglas, Michigan, and had a mailing address in Holland, Michigan.

At the time of trial, petitioner was 74 years old, petitioner received a bachelor's degree from Wayne State University in 1948 and a master's degree in education from the University of Michigan in 1953. Petitioner worked as a first grade teacher until her first child was born in 1955, when she became a stay-at-home mother. Petitioner has four children who are now adults: Nan, Karen, Robert, and Gretchen.

Petitioner married Dr. William J. Alt (Dr. Alt) in 1954, was married to Dr. Alt during the years at issue, and is currently married to Dr. Alt. Dr. Alt graduated from medical school at the University of Michigan in 1953, began his medical practice in Muskegon, Michigan, in 1959, and practices internal medicine with a specialty in cardiovascular disease. Prior to the years at issue, petitioner and Dr. Alt owned a 2,500-square-foot home.

From the beginning of Dr. Alt's medical practice, petitioner and Dr. Alt used a tax preparer, Mr. Ron Schultz (Mr. Schultz), who was not a C.P.A. but worked with an

accounting firm. Petitioner would sign the tax returns without reviewing the contents. In the early 1980s, Mr. Schultz retired, and petitioner's daughter, Karen, took over the financial affairs of petitioner and Dr. Alt and would prepare their tax returns. Karen's corporation, K.L. Financial Management, was shown as the tax preparer. Each year from 1975 through the years at issue, except for 1978, petitioner and Dr. Alt had deficiencies determined on their jointly filed tax returns.[2]

Through K.L. Financial Management, Karen created over 40 corporations through which Dr. Alt's income was funneled. Petitioner's family members were listed as the officers of these corporations, and several of the corporations were nominees of petitioner and Dr. Alt. Petitioner and Dr. Alt maintained no personal bank accounts and paid their personal expenses (household expenses, trips, shopping, and leased cars) through the corporate bank accounts. During the years ,at issue, petitioner paid the personal expenses and often made deposits into the corporate bank accounts on behalf of Karen and Dr. Alt.

During the years at issue, petitioner and Dr. Alt purchased several properties, including houses for their children and a 600-acre riverfront property upon which a Georgian mansion was being built. Further, Dr. Alt had a pension fund of $500,000, and Dr. Alt and petitioner borrowed $500,000 in order to purchase a business for their son. Petitioner was able to purchase valuable antiques. Petitioner and Dr. Alt also provided Financial

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[2] On Apr. 29, 1985, petitioner and Dr. Alt filed a petition with the Tax Court regarding a notice of deficiency for the 1981 taxable year. On May 27, 1986, the Court entered a decision in which the parties agreed that petitioner and Dr. Alt owed taxes in the amount of $83,655.40 plus additions to tax for the 1981 taxable year. Petitioner signed this decision document.

assistance to their children and fully paid for their children to attend undergraduate and graduate schools, including medical school for Nan and law school for Karen.

Petitioner and Dr. Alt filed their tax returns for the years 1982 to 1988 with a filing status of "Married filing joint return" (joint return). Respondent treated the tax return for 1989 as if Dr. Alt filed the return with a filing status of "Married filing separate" because petitioner did not sign the return. Respondent has no records indicating that petitioner filed a tax return for 1989. Petitioner chose not to review the tax returns prior to signing them, even though she was aware of past problems with the IRS. Dr. Alt never forced petitioner to sign the tax returns and never abused petitioner.

On April 5, 1989, respondent sent to petitioner and Dr. Alt a notice of deficiency for the 1985 taxable year. Respondent's adjustments giving rise to the deficiency resulted largely from disallowed deductions. Respondent also determined that petitioner and Dr. Alt were liable for additions to tax for negligence and substantial understatement of tax.

On October 10, 1991, respondent sent to petitioner and Dr. Alt a notice of deficiency for the 1982, 1983, 1984, 1986, 1987, and 1988 taxable years.[3] Respondent determined that amounts received from Dr. Alt's medical practice (William J. Alt, M.D., P.C.) as corporate distributions were taxable income. Respondent made other adjustments, including additions to tax for fraud.

On January 10, 1992, petitioner and Dr. Alt filed a petitioner with the Court to dispute the notices of defi-

---

[3] On the same date, respondent also sent to petitioner and Dr. Alt a notice of deficiency regarding increases in the deficiencies for the 1937 and 1988 taxable years.

ciency for the 1982, 1983, 1984, 1986, 1987, and 1988 taxable years. On January 13, 1992, Dr. Alt filed a petition to dispute the notice of deficiency for the 1989 taxable year. On February 22, 1993, the parties filed a Stipulation of Settlement with this Court, in which petitioner and Dr. Alt agreed that they were liable for the following deficiencies and additions to tax[4] for the 1982, 1983, 1984, 1986, 1987, and 1988 taxable years:[5]

| | | *Additions to Tax** | | |
|---|---|---|---|---|
| *Year* | *Sec. Deficiency* | *Sec. 6653(b)(1)* | *Sec. 6653(b)* | *Sec. 6661* |
| 1982 | $ 78,510 | $ 39,255 | — | $ 19,628 |
| 1983 | 176,832 | 88,416 | — | 44,208 |
| 1984 | 160,170 | 80,085 | — | 40,043 |
| 1986 | 222,252 | 166,689 | — | 55,563 |
| 1987 | 230,686 | 173,014 | — | 57,671 |
| 1988 | 221,009 | — | $165,756 | 55,252 |

*Further additions to tax were applied to the taxable years 1982, 1983, and 1984 under sec 6653(b)(2), and to the taxable years 1986 and 1987 under sec. 6653(b)(1)(3).

On April 27, 1993, the Court entered a decision pursuant to this stipulation of settlement. In March 1994, on the

---

[4] Amounts are rounded to the nearest dollar amount.

[5] Within the stipulation of settlement, Dr. Alt also agreed that was liable for a $479,404 deficiency and a $359,553 addition to tax under sec. 6663 for the 1989 taxable year.

basis of the reversal of Dr. Alt's criminal conviction,[6] petitioner and Dr. Alt filed a motion to vacate or revise this decision with the court. The Court denied the motion. *Alt v. Commissioner*, T.C No. 1994-313.

After serving 25 months in prison, Dr. Alt reestablished his medical practice in 1995. After the IRS seized assets to pay taxes owed by petitioner and Dr. Alt, petitioner began to work as a receptionist at her daughter Nan's and Dr. Alt's offices, Clinical Psychiatric Medicine and Clinical Cardiology-Internal Medicine, respectively. Petitioner is a corporate officer of clinical Cardiology-Internal Medicine, P.C. Petitioner and Dr. Alt earned the following amounts from Dr. Alt's medical practice and petitioner's receptionist work:

| Year | Dr. Alt | Petitioner | Total |
|---|---|---|---|
| 1997 | $ 13,200 | $ 39,375 | $ 52,575 |
| 1998 | 35,246 | 105,655 | 140,901 |
| 1999 | 53,761 | 83,987 | 137,748 |
| 2000 | 100,800 | 74,154 | 174,954 |

---

[6] In 1990, Karen and Dr. Alt were indicted on five counts of Federal tax violations under sec. 7201, including attempted evasion, and aiding and abetting in the attempted evasion, of personal and corporate income taxes of Dr. Alt for the taxable years of 1983 and 1984. Karen and Dr. Alt were both convicted and sentenced to imprisonment and fined. In June 1993, the U.S. Court of Appeals for the Sixth Circuit reversed the convictions due to an improper jury instruction. In May 1994, Dr. Alt entered into a plea agreement and pleaded guilty to a misdemeanor under sec. 7203 in exchange for the dismissal of the indictment and commutation of the sentence to time already served.

Currently, petitioner and Dr. Alt financially support no one other than each other.

On April 14, 2000, respondent received Form 8857, Request for Innocent Spouse Relief, from petitioner for taxable years 1982 through 1989. On August 8, 2000, Revenue Agent Susan Carene met with petitioner to discuss the request. On September 29, 2000, respondent sent petitioner a letter determining that she is not entitled to any relief under section 6015(b), (c), and f) for the taxable years 1982 through 1988. The same day, respondent sent petitioner a letter determining that no relief under section 6015 was available for 1989 because petitioner did not file a joint return for that year. On October 30, 2000, respondent received a Form 12509, Statement of Disagreement, from petitioner disputing the determinations. On December 8, 2000, respondent sent petitioner a final, notice of determination in which respondent determined that petitioner was not entitled to relief under section 6015(b), (c), and (f) for the taxable years 1982 through 1988.

On March 2, 2001, petitioner filed a petition with this court to dispute respondent's denial of relief under section 6015 for taxable years 1982 through 1989.

## OPINION

Generally, spouses filing a joint tax return are each fully responsible for the accuracy of their return and for the full tax liability. Sec. 6013(d)(3); *Butler v. Commissioner*, 114 T.C. 6, 282 (2000). Section 6015, however, provides various means which a spouse can be relieved of this joint and several obligation. Petitioner makes her claim for such relief under section 6015(b), (c), and (f). Except as otherwise provided in section 6015, petitioner bears the burden of proof. Rule 142(a).

I. *Jurisdiction*

Our jurisdiction for taxable years 1982 to 1989 is dependent on section 6015(e) because petitioner's claim for relief was made in a "stand alone" petition. *Ewing v. Commissioner*, 118 T.C. 494, 497 (2002). Respondent treated petitioner's request for relief under section 6015 as an election under section 6015(b), (c) and (f). Further, petitioner timely filed her petition with the Court for taxable years 1982 through 1988. We hold that we have jurisdiction under section 6015(e) to review the denial of petitioner's request for relief under section 6015 for taxable years 1982 through 1988.

Further, section 6015(e), allows a spouse who has requested relief to petition the Commissioner's failure to make a timely determination. *Id.* at 497. Respondent did not send petitioner a notice of determination with regard to 1989. The absence of a notice of determination does not bar this Court from having jurisdiction under section 6015(e) as long as the petition is filed on a date which is 6 months after the date the election is filed. Sec. 6015(e)(1)(A)(i)(II). The petition for 1989 was timely filed. We, therefore, hold that we have jurisdiction under section 6015(e) to review respondent's failure to make a determination on petitioner's request for relief under section 6015 for 1989.

II. *1989 Tax Return*

Petitioner requested relief under section 6015 for her 1989 tax return. Respondent argues that petitioner is not entitled to relief under section 6015 because she did not file a joint return with her spouse for 1989.

Petitioner did not file a joint return for 1989. We have held that a joint return must be filed in order for a taxpayer to be granted relief under section 6015. *Raymond v.*

*Commissioner*, 119 T.C. 191, 197 (2002). Petitioner, therefore, is not entitled to relief under section 6015 because she did not file a joint return for 1989.

III. *1982 Through 1988 Tax Returns*

Petitioner requests that the Court grant her relief from he 1982 through 1988 tax liabilities under section 6015(b), (c), or (f). Petitioner contends that she relied on professionals to prepare her tax return because the Federal tax laws are complex, complicated, and confusing.

Respondent argues that petitioner is not entitled to relief under section 6015(b), (c), or (f). Respondent contends that petitioner failed to prove that she meets the requirements in section 6015(b)(1)(B), (C), and (D). Further, respondent argues that petitioner is not eligible for relief under section 6015(c) because she is still married to Dr. Alt. Respondent also argues that he did not abuse his discretion in denying relief under section 6015(f) to petitioner because the factors in favor of not granting relief under section 6015(f) outweigh the factors in favor of granting relief to petitioner.

A. *Relief Under Section 6015(b)*

To qualify for relief from joint and several liability under section 6015(b)(1), a taxpayer must establish that

> (A) a joint return has been made for a taxable year;
>
> (B) on such return there is an understatement of tax attributable to erroneous items of 1 individual filing the joint return;
>
> (C) the other individual filing the joint return establishes that in signing the return he or she did

not: know, and had no reason to know, that there was such understatement;

(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and

(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election, * * *.

The requirements of section 6015(b)(1) are stated in the conjunctive. Accordingly, a failure to meet any one of them prevents a requesting spouse from qualifying for relief offered therein. Respondent contends that petitioner failed to establish the requirements of subparagraphs (B), (C), and (D). We need not decide whether petitioner satisfies the requirements of subparagraphs (B) and (C) because, taking into account all of the facts and circumstances as required by subparagraph (D), we find that it would not be inequitable to hold her liable for the deficiencies in tax.

The requirement in section 6015(b)(1)(D), that it be inequitable to hold the requesting spouse liable for an understatement on a joint return, is virtually identical to the same requirement of former section 6013(e)(1)(D);[7]

---

[7] Former sec. 6013(e)(1) provided:

SEC. 6013(e). Spouse Relieved of Liability in Certain Cases.—

(1) In general.—Under regulations prescribed by the Secretary, if—

(continued...)

therefore, cases interpreting former section 6013(e) remain instructive to our analysis. *Butler v. Commissioner*, *supra* at 233.

Whether it is inequitable to hold a spouse liable for a deficiency is determined "taking into account all the facts and circumstances". Sec. 6015(b)(1)(D). The most often cited material factors to be considered are (1) whether there has been a significant benefit to the spouse claiming relief, and (2) whether the failure to report the correct tax liability on the joint return results from concealment, overreaching, or any other wrongdoing on the part of the

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(...continued)

> (A) a joint return has been made under this section for a taxable year,
>
> (B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,
>
> (C) the other spouse establishes, that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement,
>
> (D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,
>
> then the other spouse shall be relieved of liability' for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

In order to make relief from joint and several liability more accessible. Congress repealed sec. 6013(e) and enacted a new provision (sec. 6015) in 1998 as part of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, sec. 3201(a), 112 Stat. 734; H. Conf. Rept. 105-599, at 249 (1998), 1998-3 C.B. 747, 1003.

other spouse. *Jonson v. Commissioner*, 118 T.C. 106, 119 (2002).

It is clear that the tax savings were beneficial to both petitioner and Dr. Alt. Petitioner and Dr. Alt were able to purchase various properties during the years at issue. For example, petitioner and Dr. Alt purchased homes for each of their children. Petitioner and Dr. Alt also purchased a 600-acre riverfront property upon which a Georgian mansion was being built. Further, petitioner and Dr. Alt were able to purchase a business for their son and fully pay for their children to attend undergraduate and graduate schools. Petitioner and Dr. Alt were also able to indulge petitioner's interest in antiques. These purchases obviously benefited petitioner.

It is also clear that there was no concealment on Dr. Alt's part. Petitioner made deposits for Dr. Alt and Karen. Further, petitioner was fully aware that Karen was involved in her financial affairs. Petitioner presented no evidence that Dr. Alt ever attempted to deceive her with respect to their financial affairs.

We have also considered other factors that are relevant to whether it would be inequitable to hold petitioner liable. We find that petitioner will not experience economic hardship if relief from the liabilities is not granted given her current level of income.[8] See *Von Kalinowski v. Commissioner*, T.C. Memo, 2001-21; *Walters v. Commissioner*, T.C. Memo. 1998-111; *Dillon v. Commissioner*, T.C. Memo. 1998-5. Petitioner did not present evidence that demonstrated that she will be unable to pay her reasonable basic living expenses if relief is not granted. Sec. 301.6343-1(b)(4), Proced. & Admin. Regs.

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[8] Petitioner and Dr. Alt's combined annual income was over $150,000 in 2000, see *supra*, 8.

We also may consider whether the requesting spouse was deserted, divorced, or separated. See *Walters v. Commissioner*, *supra*. Petitioner and Dr. Alt remain married. The two have not separated, and petitioner has not been left by her husband to deal with the tax liabilities alone. Instead, petitioner continues to enjoy the lifestyle and financial security that are largely attributable to her husband's assets and income. On the basis of the facts and circumstances, we hold that it would not be inequitable to hold petitioner liable for the deficiencies in tax for taxable years 1982 to 1988. We, therefore, conclude that petitioner is not entitled to relief under section 6015(b).

B. *Relief Under Section 6015(c)*

We conclude that petitioner is not entitled to relief under section 6015(c) for taxable years 1982 to 1988. At the time petitioner filed her election for relief under section 6015, petitioner and Dr. Alt were married, had not separated from one another, and had remained members of the same household during the 12-month period preceding the filing of the election by petitioner.[9] Sec. 6015(c)(3)(A)(i).[10]

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[9] We note that Dr. Alt was released from prison some time earlier than 1995, and petitioner filed her election for relief under sec. 6015 on Apr. 14, 2000.

[10] Sec. 6015(c)(3)(A)(i) grants relief to individuals only if:

> (I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or
>
> (II) such individual was not a member of the same household as the individual with whom such joint return was filed

(continued...)

C. *Relief Under Section 6015(f)*

Respondent argues that he did not abuse his discretion in denying petitioner equitable relief under section 6015(f).[11] Respondent's denial of relief is reviewed under an abuse of discretion standard. *Cheshire v. Commissioner*, 115 T.C. 183, 198 (2000); *Butler v. Commissioner*, 114 T.C. at 292.

Considering the facts and circumstances of this case, we held under section 6015(b)(1)(D) that it is not inequitable to hold petitioner liable for the deficiencies. The language of section 6015(f)(1), "taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either)" does not differ significantly from the language of section 6015(b)(1)(D), "taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement".[12] *Butler v.*

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[10] (...continued)
at any time during the 12-month period ending on the date such election is filed.

[11] Sec. 6015(f) provides:

SEC. 6015(f). Equitable Relief.—Under procedures prescribed by the Secretary, if—

(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and

(2 )relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.

[12] Additionally, the language in both sections is similar to the language in former sec. 6013(e)(1)(D), "taking into account ail the facts and circumstances, it is inequitable to hold the other spouse
(continued...)

*Commissioner*, *supra* at 291. Further, the equitable factors we considered under section 6015(b)(1)(D) are the same equitable factors we consider under section 6015(f).[13] As a result, we hold that respondent did not abuse his discretion in denying petitioner relief under section 6015(f) for taxable years 1982 to 1988.

In reaching our holdings, we have considered ail arguments made by the parties, and, to the extent not mentioned above, we conclude they are irrelevant or without merit.

To reflect the foregoing,

*Decision will be entered for respondent.*

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[12] (...continued)
liable for the deficiency in tax for such taxable year attributable to such substantial understatement". *Butler v. Commissioner*, 114 T.C. 276, 291 (2000); see *Mitchell v. Commissioner*, 292 F.3d 800, 806 (D.C. Cir. 2002) ("Subsection (f) has no statutory antecedent as a stand alone provision, but has roots in the equity test of former subparagraph 6013(e)(1)(D) carried forward into subparagraph 6015(b)(1)(D)."), affg. T.C. Memo. 2000-332.

[13] The Commissioner has announced a list of factors in Rev. Proc. 2000-15, sec. 4.03, 2000-1 C.B. 447, 448, that the Commissioner will consider in deciding whether to grant equitable relief under sec. 6015(f). The revenue procedure takes into account factors such as marital status, economic hardship, and significant benefit in determining whether relief will be granted under sec. 6015(f). Rev. Proc. 2000-15, sec. 4.03, 2000-1 C.B. at 448.

UNITED STATES TAX COURT
Washington, D.C. 20217

| | | |
|---|---|---|
| ROSALINDA E. ALT, Petitioner, | ) | |
| v. | ) | Docket No. 2964-01 |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | ) | |

*DECISION*

Pursuant to the determination of the Court, as set forth in its Opinion filed December 17, 2002, it is hereby

ORDERED and DECIDED that petitioner is not entitled to relief from joint and several liability on a joint return under section 6015, Internal Revenue Code, for the taxable years 1982, 1983, 1984, 1985, 1986, 1987, 1988, and 1989.

/s/ Juan F. Vasquez
Juan F. Vasquez
Judge

Entered: Dec 17, 2002

OCT 12 2004

No. 04-245

# In the Supreme Court of the United States

ROSALINDA ALT, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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## QUESTION PRESENTED

Whether the court of appeals correctly upheld the Tax Court's determination that petitioner should not be relieved of liability for tax deficiencies under the "innocent spouse" exception, 26 U.S.C. 6015.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Statement | 1 |
| Argument | 6 |
| Conclusion | 10 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103 (2001) | 6-7 |
| *Brushaber* v. *Union Pacific R.R.*, 240 U.S. 1 (1916) | 8 |
| *Cash* v. *Commissioner*, 580 F.2d 152 (5th Cir. 1978) | 9 |
| *City of Pittsburgh* v. *Alco Parking Corp.*, 417 U.S. 369 (1974) | 8 |
| *Clark* v. *Commissioner*, 76 T.C.M. (CCH) 219 (1998), aff'd, 187 F.3d 641 (8th Cir. 1999) | 9 |
| *Druker* v. *Commissioner*, 697 F.2d 46 (2d Cir. 1982), cert. denied, 461 U.S. 957 (1983) | 7 |
| *Hayman* v. *Commissioner*, 112 F.3d 1258 (2d Cir. 1997) | 8 |
| *McGowan* v. *Maryland*, 366 U.S. 420 (1961) | 8 |
| *National Collegiate Athletic Ass'n* v. *Smith*, 525 U.S. 459 (1999) | 7 |
| *Quinn* v. *Commissioner*, 524 F.2d 617 (7th Cir. 1975) | 7 |
| *Regan* v. *Taxation With Representation of Washington*, 461 U.S. 540 (1983) | 8 |
| *Reser* v. *Commissioner*, 112 F.3d 1258 (5th Cir. 1997) | 7-8 |
| *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937) | 8 |

Cases—Continued: Page

*United States* v. *Alt*, 996 F.2d 827 (6th Cir. 1993) ..... 3
*Walters* v. *National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985) ..... 7
*Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993) ..... 7

Constitution and statutes:

U.S. Const. Amend. V ..... 8
Internal Revenue Code (26 U.S.C.):
26 U.S.C. 1(a) ..... 7
26 U.S.C. 1(d) ..... 7, 8
26 U.S.C. 86 ..... 9
26 U.S.C. 214 ..... 9
26 U.S.C. 6013(d)(3) ..... 7
26 U.S.C. 6015 ..... 2, 5, 6
26 U.S.C. 6015(b) ..... 2, 4, 5, 6
26 U.S.C. 6015(b)(1)(C) ..... 2
26 U.S.C. 6015(b)(1)(D) ..... 2
26 U.S.C. 6015(c) ..... 2, 3, 4, 8, 9
26 U.S.C. 6015(c)(3)(A)(i) ..... 2
26 U.S.C. 6015(f) ..... 2, 4, 6
26 U.S.C. 6015(f)(1) ..... 3
Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685:
§ 3201, 112 Stat. 734 ..... 2
§ 3201(g)(1), 112 Stat. 740 ..... 2

# In the Supreme Court of the United States

No. 04-245

ROSALINDA ALT, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-23) is not published in the *Federal Reporter* but is *reprinted in* 101 Fed. Appx. 34. The opinion of the Tax Court (Pet. App. 26-41) is reported at 119 T.C. 306.

### JURISDICTION

The judgment of the court of appeals was entered on June 3, 2004. The petition for a writ of certiorari was filed on August 17, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

1. Under the Internal Revenue Code, an individual who files a tax return jointly with his or her spouse may be relieved of liability for understating a tax liability on

the return by demonstrating that he or she is an "innocent spouse." Specifically, Section 6015 of the Code provides three distinct types of relief for taxpayers who file joint federal income tax returns.*

a. Under Section 6015(b) of the Internal Revenue Code, an individual may avoid joint and several liability for a tax understatement by "establish[ing] that in signing the return he or she did not know, and had no reason to know, that there was such understatement," 26 U.S.C. 6015(b)(1)(C), and that, "taking into account all the facts and circumstances, it is inequitable to hold" the spouse liable for the deficient taxes. 26 U.S.C. 6015(b)(1)(D).

b. Section 6015(c)—the provision to which petitioner objects—provides that an individual who has filed a joint return may elect to limit his or her tax liability to the amount that would have been due had he or she filed separately. This relief is available only where the taxpayer is "no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates" or "was not a member of the same household" during the 12-month period prior to the election. 26 U.S.C. 6015(c)(3)(A)(i).

c. Finally, Section 6015(f) generally authorizes the Internal Revenue Service to grant "equitable" relief where a spouse does not qualify under Section 6015(b)

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* In 1998, Congress substantially revised and expanded the "innocent spouse" exceptions to joint and several liability for jointly filed tax returns. See Internal Revenue Service Restructuring and Reform Act of 1998 (1998 Act), Pub. L. No. 105-206, § 3201, 112 Stat. 734. Although the liabilities at issue here arose prior to the enactment of the expanded exceptions, those provisions nonetheless apply to the liabilities that were unpaid on the date of their enactment. See § 3201(g)(1), 112 Stat. 740.

or (c), and "taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency." 26 U.S.C. 6015(f)(1).

2. Petitioner is a married woman who, in the tax years at issue here, filed joint federal tax returns with her husband, Dr. William J. Alt. Pet. App. 2, 30. During those tax years, petitioner's daughter, Karen, managed petitioner's and Dr. Alt's financial affairs and prepared their tax returns. *Id.* at 2. As part of this financial management, Karen created more than 40 corporations through which she funneled Dr. Alt's income, resulting in substantial tax deficiencies for the taxable years 1982 through 1989. *Ibid.* Several of the corporations were petitioner's nominees, and she made deposits to the various corporate bank accounts and used them to pay her and Dr. Alt's personal expenses. *Id.* at 14-15 & n.4.

The Commissioner of Internal Revenue subsequently issued notices of deficiency to petitioner and her husband for understated tax liabilities, and additions to tax for fraud and negligence. Pet. App. 3-4. Petitioner and her husband challenged the determination of tax liability in the United States Tax Court, and in 1993, entered a stipulated settlement determining deficiencies and additions to tax for 1982, 1983, 1984, 1986, 1987, and 1988. *Id.* at 4-5.

In addition to the proceedings before the Tax Court, criminal charges were brought against Dr. Alt and Karen for tax evasion and various other crimes. Pet. App. 3-4. They were convicted and imprisoned after a jury trial, but their convictions were reversed by the United States Court of Appeals for the Sixth Circuit due to improper jury instruction, see *United States* v. *Alt*, 996 F.2d 827 (1993), and the two eventually entered

pleas of guilty to lesser offenses. Pet. App. 4; Pet. 7. In 1992, the Commissioner commenced and prevailed in a civil action against the Alts to collect back taxes, penalties and interest. Pet. App. 5-6. The Alts' assets were seized to satisfy the judgment against them, but as of 2001, petitioner and her husband had accumulated tax deficiencies totaling $3,512,423. *Id.* at 6-7, 20.

In April 2000, petitioner filed a request for innocent spouse relief under Internal Revenue Code Section 6015(b), (c) and (f) for the taxable years 1982 through 1989. Pet. App. 7. The Commissioner denied that request. *Ibid.* On March 2, 2001, petitioner sought review of the Commissioner's determination in the United States Tax Court. *Ibid.*

3. The Tax Court denied petitioner's request for innocent spouse relief. Pet. App. 26-41. The court reasoned that petitioner was not eligible for relief under Section 6015(b) because, taking into account all the facts and circumstances, "it would not be inequitable to hold petitioner liable for the deficiencies." *Id.* at 39. Petitioner was not entitled to relief under Section 6015(c), because at the time of her petition, "petitioner and Dr. Alt were married, had not separated from one another, and had remained members of the same household during the 12-month period preceding the filing of the election by petitioner." *Ibid.* Finally, the court concluded that the Commissioner "did not abuse his discretion in denying petitioner relief under section 6015(f) for taxable years 1982 to 1988" in light of the court's analysis of the "equitable factors" under Section 6015(b). *Id.* at 41.

4. The court of appeals affirmed. Pet. App. 1-23. The court first observed that petitioner "raises *one* issue on appeal: whether the Tax Court erred in denying her innocent spouse relief under 26 U.S.C. § 6015."

*Id.* at 9 (emphasis added). She did not "specifically challenge the grounds on which the Tax Court denied her relief, namely that it was not inequitable to hold her liable," *ibid.*, but argued only that she was entitled to relief because she was "reared in a culture that demanded women refrain from questioning the breadwinner regarding fiscal matters." *Ibid.*

The court then examined petitioner's claim in light of each of the provisions providing for innocent spouse relief in Section 6015. Pet. App. 9-23. With respect to Section 6015(b), the court observed that it required a balancing of the following factors: "(1) the culpable spouse's wrongdoing directed toward the requesting spouse; (2) the requesting spouse's actual knowledge or reason to know of the tax deficiency; (3) the benefit the requesting spouse received from the tax deficiency in the past; (4) the requesting spouse and the culpable spouse's current marital status; and (5) the probable economic hardship that might be caused by the enforcement of joint and several liability." *Id.* at 11-12. Examining the record, the court concluded that no evidence suggested that "Dr. Alt either deceived Petitioner or concealed any information from her regarding their financial affairs or tax returns." *Id.* at 12-13. In addition, all other factors militated against granting relief: "a reasonable person in [p]etitioner's situation would have known of the tax deficiencies," *id.* at 16; "[p]etitioner enjoyed the 'fine life'" as a result of the savings from the deficiencies; petitioner had not been deserted or divorced by, or separated from Dr. Alt, *id.* at 19; and given that the couple's joint income exceeded $100,000, the family would "be able to pay reasonable basic living expenses if relief is not granted." *Id.* at 20-21.

With respect to the request for general equitable relief under Section 6015(f), the court held that the same analysis of whether liability was inequitable under Section 6015(b) applied. Pet. App. 21-22. Because petitioner had failed to demonstrate an inequitable result under Section 6015(b), "she is not eligible to be considered for the Secretary's discretionary relief under § 6015(f)(1)." *Id.* at 22.

Finally, the court of appeals noted that "[i]nitially petitioner brought a claim under § 6015(c)," but because she did "not challenge the Tax Court's factual finding regarding her marital status, which disqualifies Petitioner from relief pursuant to § 6015(c)(3)(A)(i), this Court need not address the issue." Pet. App. 22-23.

**ARGUMENT**

Petitioner contends (Pet. 13-20) that the innocent-spouse provisions of the Internal Revenue Code unconstitutionally burden the right to marry by treating individuals who terminate their marriages or live apart from their spouses more favorably than individuals who do not. Petitioner failed to raise that argument in the lower courts, however, and there is no conflict among the courts of appeals on that question. Moreover, petitioner's contention is without merit. Accordingly, further review is not warranted.

1. Petitioner failed to argue in the court of appeals that the innocent-spouse provisions unconstitutionally burden the right to marry. Rather, petitioner argued solely that she was entitled to relief under Section 6015 because she was "reared in a culture that demanded women refrain from questioning the breadwinner regarding fiscal matters." Pet. App. 9. Accordingly, whether Section 6015 is unconstitutional is not a question preserved for this Court's review. See *Adarand*

*Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 109 (2001); *National Collegiate Athletic Ass'n* v. *Smith*, 525 U.S. 459, 470 (1999); *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993).

2. In addition, there is no conflict over the question presented that would warrant this Court's review. Indeed, no court of appeals has even *considered* whether the innocent-spouse provisions unconstitutionally burden the right to marry by allegedly favoring divorced and separated individuals. Cf. *Quinn* v. *Commissioner*, 524 F.2d 617, 626-627 (7th Cir. 1975) (rejecting argument that innocent-spouse exemption was unconstitutional to the extent it failed to *always* insulate wives); see *Druker* v. *Commissioner*, 697 F.2d 46, 50-51 (2d Cir. 1982) (concluding marriage tax penalty does not unconstitutionally burden the right of marriage), cert. denied, 461 U.S. 957 (1983). As this Court has observed, "[j]udging the constitutionality of an Act of Congress is properly considered the gravest and most delicate duty that this Court is called upon to perform." *Walters* v. *National Ass'n of Radiation Survivors*, 473 U.S. 305, 319 (1985) (internal quotation marks omitted). Judging an act's constitutionality would be particularly uncalled for where, as here, the courts of appeals have not considered its constitutionality and petitioner failed to raise the question in the lower courts.

3. In any event, petitioner's argument is without merit. Under the Internal Revenue Code, couples who file joint tax returns enjoy a lower tax rate on a given amount of income than couples filing separate returns, see 26 U.S.C. 1(a) and (d), but in exchange, are subject to joint and several liability for understatements on that return, see 26 U.S.C. 6013(d)(3), even where one spouse earns substantially more than the other. *Reser*

v. *Commissioner*, 112 F.3d 1258, 1262 (5th Cir. 1997); *Hayman* v. *Commissioner*, 992 F.2d 1256, 1259 (2d Cir. 1993). Married taxpayers may avoid joint liability by filing separate returns and paying tax at the rates applicable to married persons filing separate returns. 26 U.S.C. 1(d).

In light of that scheme, petitioner is wrong to claim (Pet. 14) that Section 6015(c) unconstitutionally interferes with the marriage right by "construct[ing] a barrier to 'innocent spouse' relief predicated on an ongoing marital relationship." In distinguishing between individuals who remain married to and living with their spouses and those who do not, Congress has created a valid and appropriate statutory classification.

Statutory classifications satisfy the requirements of due process "if they bear a rational relation to a legitimate governmental purpose." *Regan* v. *Taxation With Representation of Washington*, 461 U.S. 540, 547 (1983); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961). When "creating classifications and distinctions in tax statutes," moreover, Congress enjoys "especially broad latitude." *Taxation With Representation*, 461 U.S. at 547; *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 584 (1937); *Brushaber* v. *Union Pacific R.R.*, 240 U.S. 1, 24, 26 (1916). A tax statute violates the Fifth Amendment only where "the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property." *Brushaber*, 240 U.S. at 24; cf. *City of Pittsburgh* v. *Alco Parking Corp.*, 417 U.S. 369, 373 (1974).

The distinction in Section 6015(c) between individuals who remain married to and living with their spouses and those who do not is a legitimate statutory classification. It reflects the reality that it may be unfair to treat a couple as a single economic unit when they no

longer reside in the same household, pool economic resources, or obtain the financial benefits of marriage. Thus, the courts of appeals have upheld other statutory provisions according preferential treatment to spouses not sharing a household against due process challenges, including the dependent care expense deduction, 26 U.S.C. 214, which required married taxpayers in the same household to file a joint return in order to qualify for the deduction, see *Cash* v. *Commissioner*, 580 F.2d 152 (5th Cir. 1978), and formulas for computing the taxable portion of Social Security benefits, 26 U.S.C. 86, which set a "base amount" of zero for a married taxpayer filing separately who lived with his spouse for any part of the year, but of $25,000 for a married taxpayer filing separately who did not share a household with his spouse for any part of the year. *Clark* v. *Commissioner*, 76 T.C.M. (CCH) 219 (1998), aff'd, 187 F.3d 641 (8th Cir. 1999).

With respect to the innocent-spouse exception, it is entirely reasonable for Congress to offer increased protection to individuals who no longer function as a single economic unit. In those circumstances, the individual seeking innocent-spouse protection no longer benefits from any tax understatement or the tax benefits that come with marriage. Thus, it is more equitable to relieve such individuals of liability. By contrast, the Tax Court observed in this case that petitioner "continues to enjoy the lifestyle and financial security attributable to her husband's assets and income." Pet. App. 39. In such circumstances, the inequity that the innocent spouse exception seeks to alleviate is significantly lessened, if not absent altogether.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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